the bed of a stream is complete even if the title to the bed is in the riparian owner. It becomes difficult therefore to support the principal case otherwise than as a result of legislative declarations with respect to the Niagara River.[23]

VALIDITY OF STATE RETROSPECTIVE LEGISLATION.—Retrospective legislation is often unjust, in many cases oppressive, and has always been held in high disfavor.[1] The courts of this country, following the early English decisions,[2] refuse to give to a law a retroactive operation, even when no constitutional guaranties are violated, unless compelled so to do by clear and imperative language of the legislature,[3] and many of the state constitutions contain express provisions against legislation of this character.[4] The nearest approach to this inhibition in the Federal Constitution is the clause against *ex post facto* laws, but that was early held to apply only to criminal matters,[5] and this principle is now accepted as an axiom in the science of jurisprudence. Hence, as the "Due Process of Law" clause of the Fifth Amendment does not apply to the states[6] they were, prior to the passage of the Fourteenth Amendment, restricted in the enactment of retrospective legislation only in so far as it was *ex post facto* or impaired the obligation of contracts.[7] It was under this amendment that the recent case of *Ettor* v. *City of Tacoma* in the Supreme Court of the United States,[8] presented the question whether a statutory right of action was a vested right which could not be abridged by a retrospective law. A statute of Washington authorized a municipality to establish an original grading of the street, but provided that it should compensate abutting owners for resulting damages. After the grading, and pending the plaintiff's action, the provision of the statute requiring the payment of compensation was repealed. The court held that the plaintiff had a vested property right in the chose in action, and the attempt

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Franzini *v.* Layland (1903) 120 Wis. 72; in Illinois, Middleton *v.* Pritchard (1842) 4 Ill. 510; in Mississippi, Steamboat Magnolia *v.* Marshall, *supra;* but to the state in Iowa, McManus *v.* Carmichael, *supra;* in Minnesota, Castner *v.* Steamboat Dr. Franklin (1852) 1 Minn. 73.

[23]See Matter of Commissioners of State Reservation (N. Y. 1885) 37 Hun 537, 547.

[1]See Sutherland, Statutory Construction, § 641.

[2]See Helmore *v.* Shuter (1678) 2 Show. K. B. 16; Couch *v.* Jeffries (1769) 4 Burr. 2460.

[3]See Dash *v.* Van Kleeck (N. Y. 1811) 7 Johns. 477, 503; Osborne *v.* Huger (S. Car. 1791) 1 Bay 179; Sutherland, Statutory Construction § 642.

[4]See Constitution of Ohio, Art. 2, § 28; Constitution of Colorado, Art. 2, § 1; Dow *v.* Norris (1827) 4 N. H. 16.

[5]Calder *v.* Bull (1798) 3 Dallas 386. This is clearly opposed to the view of Chancellor Kent, who after referring to this decision says: "Yet laws impairing previously acquired rights are equally within the reason of that prohibition, and equally to be condemned." See Dash *v.* Van Kleeck, *supra,* at p. 505.

[6]Barron *v.* Baltimore (1833) 7 Pet. 243.

[7]See Davidson *v.* New Orleans (1877) 96 U. S. 97.

[8]Not yet reported.

to defeat his recovery by a repeal of the statute deprived him of his property without due process of law.

The question of the inviolability of statutory rights has occasioned much litigation, and the decisions are by no means harmonious.[9] A typical example is found in the repeal of a statute which allowed an action for the recovery of a penalty. The general rule is that the repeal abates all proceedings for the penalty which have not been prosecuted to final judgment.[10] This doctrine, however, seems to have evolved from the misapplication, as a precedent, of the case of *Yeaton* v. *United States*.[11] In that case it was held that the repeal of a statute decreeing a forfeiture, barred the further prosecution for its recovery. The principle of this decision is perfectly consistent with the view of the principal case,[12] for in the former, the Government was the only party interested in the recovery of the forfeiture, and it could, by a repeal of the statute, release this right to the forfeiture,[13] just as it may relinquish the right to prosecute for the commission of a crime. But it does not necessarily follow that the interest of a private individual may also be destroyed.[14]

The defendants in the principal case contended that the statute conferred upon abutting property owners a mere remedy, the continued existence of which depended upon the will of the legislature, and that therefore, a repeal of the statute would not destroy his right, but only left its violation without redress.[15] This argument cannot be sustained. An abutting owner has no right to damages consequential to an original grading of the streets, for the city in performing such functions acts in a governmental capacity and against the sovereign one can have no legal right to indemnity.[16] Therefore the statute in the principal case created a right in the plaintiff. The answer to the further question whether this right could be revoked by a subsequent statue, must depend upon the intention of the legislature, as expressed in the statute conferring the right. This intention was to vest in the plaintiff a right to damages upon the happening of a cer-

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[9]See Norris *v.* Crocker (1851) 13 How. 429; *cf.* Steamship Co. *v.* Joliffe (1864) 2 Wall. 450; see Lewis *v.* Foster (1817) 1 N. H. 61; *cf.* Dow *v.* Norris, *supra.*

[10]Bennet *v.* Hargus (1870) 1 Neb. 419; Curran *v.* Owens (1879) 15 W. Va. 208; State *v.* Youmans (1854) 5 Ind. 280; Van Inwagen *v.* Chicago (1871) 61 Ill. 31.

[11](1809) 5 Cranch. 281.

[12]Taylor *v.* Rushing (Ala. 1829) 2 Stew. 160.

[13]See Pen. & Atl. R. R. Co. *v.* State (1903) 45 Fla. 86; Commonwealth *v.* Duane (Pa. 1809) 1 Bin. 601.

[14]See Howel *v.* James (1748) 2 Str. 1272; Weddel *v.* Thurlow (1710) 1 Parker 280.

[15]See Ettor *v.* City of Tacoma (1910) 51 Wash. 50.

[16]See 4 Dillon, Municipal Corporations (5th ed.) § 1676 *et seq.;* Cope *v.* Hampton County (1894) 42 S. C. 17. This ground of non-liability is apparently negatived by the further expression in the authorities that the city is liable for a negligent execution of the work, or if the change of grade is not for street purposes. Hill *v.* St. Louis (1875) 59 Mo. 412; McCabe *v.* New York (1913) 140 N. Y. Supp. 127. It would seem, however, that the city is liable in these instances because it exceeds its authority and no longer acts in a governmental capacity.

tain contingency,[17] namely, the grading of the street by the municipality, and this having occurred, the right in the nature of a gift, became absolute and irrevocable.[18]

DOWER IN FRAUDULENT CONVEYANCES.—The attitude of the English courts in refusing to afford the protection to dower[1] which they grant to curtesy[2] may be justified on the ground that at common law the husband was considered a purchaser of the wife's property, while it was presumed that she was well provided for by jointure.[3] This presumption had the effect of a rule of law. Consequently, although a conveyance by him was not deemed to be in fraud of her rights, her deed delivered on the eve of marriage could be set aside by him. On principle, the denial of relief to the wife or the husband in such a case would be proper, for until the marital relation is established the interest of either party in the property of the other is not a vested legal right, but a mere expectancy. Nor is there any reason to consider either party a purchaser of the other's possessions.[4] In America, however, where jointures have never been recognized,[5] the courts have refused to accept any distinction between dower and curtesy, and have, therefore, shielded dower from the results of fraudulent ante-nuptial transfers.[6] Since no sound principle underlies the operation of the doctrine, there is great confusion of judicial opinion as to its limitations, particularly in ascertaining what proof is necessary to warrant a nullification of the pre-marital conveyance.[7] Although, in some

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[17]Reynolds *v.* Common Council (1893) 140 N. Y. 300; Taylor *v.* Woodward (1858) 10 Cal. 91; see Harris *v.* Townshend (1883) 56 Vt. 716. It has been held that a right analogous to the one involved in the principal case was assignable and passed to an assignee in bankruptcy. Brandon *v.* Sands (1794) 2 Ves. Jr. 514; Meech *v.* Stoner (1859) 19 N. Y. 26; Palen *v.* Johnson (N. Y. 1866) 46 Barb. 21.

[18]Elgin *v.* Eaton (1876) 83 Ill. 535; Hunt *v.* Gulick (1827) 9 N. J. L. 258; see Harrington *v.* County Commrs. (Mass. 1839) 22 Pick. 263; *contra,* Hampton *v.* Commonwealth (1852) 19 Pa. 329; Dyer *v.* Ellington (1900) 126 N. C. 941.

[1]Swannock *v.* Lyford (1741) Ambler 6; 3 Co. Lit. (15th ed.) 208a, note 105; Bottomly *v.* Lord Fairfax (1712) Prec. in Chancery 336. Formerly, dower was highly favored in England, as a softening of the feudal principle of the gift of land for life. 1 Cruise, Digest, 127, 134 *et seq.*

[2]Carleton *v.* Dorset (1686) 2 Vern. 17; Goddard *v.* Snow (1826) 1 Russ. 485.

[3]Swannock *v.* Lyford, *supra.*

[4]Nelson *v.* Brown (1910) 164 Ala. 397; *contra,* Bookout *v.* Bookout (1898) 150 Ind. 63.

[5]Chandler *v.* Hollingsworth (1867) 3 Del. Ch. 99.

[6]Swaine *v.* Perine (N. Y. 1821) 5 Johns. Ch. 482; Kelly *v.* McGrath (1881) 70 Ala. 75; Ward *v.* Ward (1900) 63 Oh. St. 125; Chandler *v.* Hollingsworth. *supra;* see Arnegaard *v.* Arnegaard (1898) 7 N. Dak. 475. The law courts, on the other hand, have been very reluctant to adopt this principle, because until the legal interest vests there is nothing of which the law can take cognizance, although it may be a fraud. Baker *v.* Chase (N. Y. 1844) 6 Hill 482.

[7]See Leonard *v.* Leonard (1902) 181 Mass. 458; Jenkins *v.* Rhodes (1907) 106 Va. 564.